

BEFORE THE MONTANA HERITAGE PRESERVATION
AND DEVELOPMENT COMMISSION
DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the proposed transfer of ARM 10.125.101, 10.125.102, 10.125.103, 10.125.104, 10.125.105, 10.125.106, and 10.125.107 and the adoption of New Rules I through VII pertaining to the sale of real and personal property by the Montana Heritage Preservation and Development Commission) NOTICE OF PUBLIC HEARING ON PROPOSED TRANSFER AND ADOPTION))))))))))

TO: All Concerned Persons

1. On January 16, 2008, at 10:00 a.m, the Montana Heritage Preservation and Development Commission (commission) will hold a public hearing in the Madison County Courthouse, 2nd floor courtroom, 100 East Wallace Street, Virginia City, Montana, to consider the proposed transfer and adoption of the above-stated rules.

2. The commission will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the commission no later than 5:00 p.m., January 4, 2008, to advise the commission of the nature of the accommodation that you need. Please contact Montana Heritage Preservation and Development Commission, Attn: Karlee Smith, 101 Reeder's Alley, Helena, Montana 59601; telephone (406) 449-6522; TDD (406) 841-2702; fax (406) 843-5468; or e-mail karlees@mt.gov.

3. The department proposes to transfer the following rules:

<u>OLD</u>	<u>NEW</u>	
10.125.101	8.112.101	DEFINITIONS
10.125.102	8.112.102	ACQUISITION PROCEDURE
10.125.103	8.112.105	UNCONDITIONAL CONVEYANCE
10.125.104	8.112.106	HISTORIC AND CULTURAL CONSIDERATIONS
10.125.105	8.112.109	THE PROPERTY AS SELF-SUPPORTING
10.125.106	8.112.110	EDUCATIONAL RESOURCE
10.125.107	8.112.113	NON-HISTORIC PROPERTIES

REASON: As part of the periodic review of administrative rules, and in conjunction with Ch. 485, L. 2003 (SB 232 [Mahlum]) transferring the Montana Heritage Development and Preservation Committee from the Montana Historical Society to

the Department of Commerce, the committee is proposing a transfer of existing commission rules pertaining to acquisition of real and personal property from ARM Title 10 (Education) to ARM Title 8 (Department of Commerce).

4. The rules as proposed to be adopted provide as follows:

NEW RULE I DEFINITIONS The following definitions shall be used in these rules, unless context clearly indicates otherwise:

(1) "Commission" means the Montana Heritage Preservation and Development Commission as created by 22-3-1001, et seq., MCA.

(2) "Covenant" means a restriction on the use of real property that runs with the land.

(3) "Executive Committee" means the committee appointed by the commission chair, made up of the current commission chair, a recent past chair, the Director of the Montana Department of Commerce or his/her designee, and the current chair of the Commission's Finance and Management Committee.

(4) "Fee title interest" means a fee simple estate or interest.

(5) "Personal property" means all property that is not real property.

(6) "Property" means real and/or personal property, unless otherwise specifically indicated.

(7) "Real property" or "real estate" means land, any thing incidental or appurtenant thereto, and any immovable improvements or fixtures attached or affixed to the land, including but not limited to fences, trees, buildings, and stationary mobile homes.

(8) "Sale" means the transfer of ownership of property acquired or managed by the commission, or any other conveyance, transfer, assignment, or devise from the applicable state agency of a fee title interest in property acquired or managed by the commission. Sale does not include property that is on loan to a person or entity.

AUTH: 22-3-1003, MCA

IMP: 22-3-1003, MCA

NEW RULE II SALE CRITERIA (1) The following criteria shall receive careful consideration by the commission in evaluating property for proposed sale:

(a) whether the property represents the state's culture and history;

(b) whether the property can become self-supporting;

(c) whether the property can contribute to the economic and social enrichment of the state;

(d) whether the property lends itself to programs to interpret Montana history;

(e) whether the sale will create significant social and economic impacts to affected local governments and the state;

(f) whether the sale is supported by the Director of the Montana Historical Society;

(g) whether the commission should include any preservation covenants in a proposed sale agreement for real property;

(h) whether the commission should incorporate any design review ordinances established by Virginia City into a proposed sale agreement for real property;

(i) a summary analysis of the costs and benefits of retaining or selling the property. Cost of retaining the property should include maintenance, upkeep, and other long-term or ongoing costs to the commission. Costs of selling the property should include advertising, appraisals, legal fees, and title searches;

(j) compliance with the Montana Antiquities Act (22-3-421, et seq., MCA) and any implementing or related administrative rules, including but not limited to ARM 10.121.901, et seq.; and

(k) other matters that the commission considers necessary or appropriate.

AUTH: 22-3-1003, MCA

IMP: 22-3-1003, MCA

NEW RULE III PUBLIC NOTICE PRIOR TO DECISION TO SELL

PROPERTY (1) For those properties approved to proceed to the commission for consideration in accordance with these rules, an opportunity will be provided for the public to comment. A date, time, and location will be established for a public hearing in the geographic area of the proposed sale. A deadline will be established for the receipt of written comments.

(2) Notice of the hearing shall be made as follows:

(a) Publication in at least one newspaper of general circulation in the geographic area of the proposed sale. Notice shall be published twice, with the first publication no more than 21 days prior to the hearing, and the second publication no less than three days prior to the hearing, and at least six days separating each publication.

(b) Posted on the commission's web site. The published notice shall contain:

(i) date, time, and place of the hearing;

(ii) brief statement and description of the property considered for sale;

(iii) name, address, and telephone number of the person who may be contacted for further information on the hearing or the property; and

(iv) deadline for written comments and an address where comments may be sent.

(c) A copy of the report(s) required to be prepared under these rules will be posted on the commission's web site. Paper copies of the report shall be made available for review upon request.

(d) The public hearing will be chaired by the commission chair or his/her designee and at least one of the members of the Real Property or Personal Property Sales Committee, as applicable, established herein shall also attend. Paper copies of the report shall be made available at the hearing.

(e) The commission may, at its discretion, conduct additional types of public notice and opportunities for public comment.

AUTH: 22-3-1003, MCA

IMP: 22-3-1003, MCA

NEW RULE IV SALE PROCEDURES – REAL PROPERTY (1) Initial recommendations from the Real Property Sales Committee and review by Executive Committee:

(a) A Real Property Sales Committee shall be established by the commission to review real properties for possible sale, and to make initial recommendations on such sales to the Executive Committee. Members of the Real Property Sales Committee shall be appointed by the Commission Chair. At any time in the review process, the Real Property Sales Committee may request commission staff to assist in preparation of reports, or in other capacities.

(b) Such recommendations will take into consideration the criteria outlined in [NEW RULE II].

(c) The Real Property Sales Committee may make real property sale recommendations to the Executive Committee at any meeting properly noticed and with the discussion of sales included on the agenda. All recommendations will include a review of how the proposed sale meets the criteria in [NEW RULE II]. The Real Property Sales Committee shall prepare its recommendation to the Executive Committee in writing.

(d) On each real property sale under consideration, the Executive Committee shall decide whether to:

- (i) proceed to the next level of review as detailed in (2);
- (ii) request additional information regarding the criteria in [NEW RULE II];
- (iii) forward a recommendation directly to the commission for its consideration; or
- (iv) deny the recommendation.

(e) The Real Property Sales Committee shall report to the commission as needed on all real properties managed by the commission, identifying which, if any, properties are currently being reviewed by the Real Property Sales Committee or are scheduled to be reviewed.

(2) Detailed review of real properties approved by the Executive Committee to be further considered for sale:

(a) For real properties approved by the Executive Committee to proceed to the next level of review, the Real Property Sales Committee shall prepare a written report for each property that addresses the following:

(i) The report shall address the quality of the significance of the property in Montana history, including, but not limited to, the following:

(A) association with events that have made a significant contribution to Montana history and prehistory;

(B) association with the lives of a person or persons who were significant in Montana history;

(C) embodiment of distinctive characteristics of a type, period, or method of construction representing an event, way of life, groups of persons, or trends in Montana history;

(D) whether the property has yielded or is likely to yield information important to Montana history or prehistory;

(E) the property's authenticity and integrity of location, design, setting, materials, workmanship, age, and its aesthetic or historic sense of place or period of time; and

(F) whether the sale would have indirect adverse effects to the property proposed for sale, or to any remaining property acquired or managed by the commission.

(ii) The report shall assess whether the property can become self-supporting, including consideration of:

(A) the location of the property and its proximity to population centers, to other areas of historical and popular interest, and to standard tourist routes;

(B) the difficulty or ease in access to the property;

(C) the likelihood of individual, corporate, or other financial support;

(D) the estimated cost of restoration, rehabilitation, or maintenance of the property;

(E) the degree of popular and educational interest in the property; and

(F) the current and projected revenues and expenses associated with the property.

(iii) The report shall assess the economic and social benefits the property provides to the public in its current use, compared with potential economic and social benefits to the public possible with private ownership. The assessment shall compare public availability of educational/interpretive aspects of the property, and economic advantages/disadvantages of public versus private ownership.

(iv) The report shall identify whether the property is an educational resource for the study and interpretation of Montana history, assessed in the context of other existing or planned interpretive programs wherever possible, and including a discussion of any existing or unique interpretive factors associated with the property.

(v) The report shall identify local governments and state agencies with operations or facilities in the area of the proposed sale. The report shall identify how these government entities would be affected by the sale, how they were notified of the potential sale, and shall include a copy of any comments or responses received from these entities.

(vi) The report shall consider the need for any preservation covenants in a proposed sale agreement to preserve the historic qualities of the property after transfer to private ownership, who would enforce the covenants, and how any maintenance or other costs required thereunder would be paid.

(vii) The report should discuss whether and why any design review ordinances established by Virginia City should be incorporated into a proposed sale agreement for the property.

(viii) The report shall include a written letter of support by the Director of the Montana Historical Society, or an explanation of why such support has not been obtained.

(ix) The report shall include a record of compliance with the Montana Antiquities Act (22-3-421, et seq., MCA), including a letter signed by the State Historic Preservation Officer indicating whether he/she supports or does not support the proposed sale and a summary of the rationale for that decision.

(b) The Real Property Sales Committee shall present the report and their recommendations to the Executive Committee in writing at any meeting properly noticed and with the discussion of sales included on the agenda.

(c) The Executive Committee shall decide whether to:

- (i) proceed to the public notice and hearing process specified in these rules;
 - (ii) request additional information regarding the criteria in [NEW RULE II]; or
 - (iii) deny the recommendation.
- (3) Commission decision to proceed or not to proceed with a proposed sale:
- (a) The commission shall make a decision to proceed or not proceed with a proposed sale at a properly noticed meeting, after an opportunity for public comment has been provided, based upon consideration of the criteria in [NEW RULE II] as set forth in the report(s) required herein, any comments from affected local government officials, recommendations from professional historians, and comments from the public at large.
 - (b) For approved proposals for the sale of real property, the commission shall recommend the approved proposal, together with any covenants or conditions attached thereto, to the Board of Land Commissioners, per 22-3-1003 and 77-2-301, et seq., MCA.

AUTH: 22-3-1003, MCA

IMP: 22-3-1003, MCA

NEW RULE V SALE PROCEDURES - PERSONAL PROPERTY

- (1) Recommendations to sell personal property:
- (a) The Personal Property Sales Committee shall review and recommend the sale of personal property. Members of the Personal Property Sales Committee shall include an equal number of members of the Montana Historical Society Board of Trustees and commission members, as specified in 22-3-1003, MCA. Such review must consider the criteria in [NEW RULE II].
 - (b) The Personal Property Sales Committee shall identify whether the property being considered for sale is from the former Bovey assets acquired by the 55th Legislature (the Bovey assets). All funds from the sale of personal property from the Bovey assets must be placed in a trust fund, and interest from the trust fund must be used to manage, protect, and directly care for the remaining personal property acquired and managed by the commission, as required by 22-3-1003, MCA.
 - (c) Prior to forwarding a recommendation to the Executive Committee to sell personal property item(s), the Personal Property Sales Committee shall consider the criteria in [NEW RULE II], and provide an estimated dollar value of the item(s) and/or an estimated cost of a third-party appraisal. The subcommittee shall prepare its recommendation to the Executive Committee in writing.
 - (d) At any time in the review process, the Personal Property Sales Committee may direct commission staff to assist in preparation of reports or in other capacities.
 - (e) Only those personal property item(s) for which a recommendation to sell is supported by a majority of the Personal Property Sales Committee members shall be forwarded to the Executive Committee or commission for consideration.
 - (f) On each personal property sale under consideration, the Executive Committee shall by vote decide to:
 - (i) proceed to the next level of detailed review as detailed in (2);

- (ii) request additional information regarding the criteria found in [NEW RULE II];
 - (iii) forward a recommendation directly to the commission for its consideration; or
 - (iv) deny the recommendation.
- (2) Detailed review of personal property approved by Executive Committee to be further considered for sale:
- (a) For personal property item(s) approved by the Executive Committee to proceed to the next level of review, the Personal Property Sales Committee shall prepare a written report for each item that considers the criteria in [NEW RULE II] in accordance with the criteria set forth in (2) of [NEW RULE IV]. The report shall also include an estimated dollar value of the item(s) and/or an estimated cost of a third-party appraisal.
 - (b) The Personal Property Sales Committee shall submit the report and its recommendations to the Executive Committee in writing at a meeting properly noticed and with the discussion of sales included on the agenda.
 - (c) The commission shall decide to:
 - (i) proceed to the public notice and hearing process specified in these rules;
 - (ii) request additional information regarding the criteria stated in [NEW RULE II]; or
 - (iii) deny the recommendation.
- (3) The commission shall make a decision to proceed or not proceed with a proposed sale at a properly noticed meeting, after an opportunity for public comment has been provided, based upon consideration of the criteria found in [NEW RULE II] as set forth in the report(s) required herein, any comments from affected local government officials, recommendations from professional historians, and comments from the public at large.

AUTH: 22-3-1003, MCA

IMP: 22-3-1003, MCA

NEW RULE VI SALE OF PERSONAL PROPERTY AFTER COMMISSION APPROVAL

(1) The commission is not required to sell any personal property proposed for sale through the procedures described in these rules through the Property and Supply Bureau's Surplus Program, nor is it subject to the bureau's rules for disposal (22-3-1003(8), MCA).

(2) The commission may have the personal property item(s) appraised to determine the dollar value of such items in order to assist the commission in setting the sales price of any personal property item. The commission, in its discretion, may obtain more than one appraisal and may obtain a review appraisal.

(3) The commission shall direct staff to provide for a competitive process for the sale of personal property, including but not limited to auctions, sealed bids, open bids, via web sites established for such a purpose, or any other fair and equitable manner that the commission approves for an item as part of the commission's decision to sell that item.

(4) The commission shall provide public notice of the sale. The notice shall include any requirements of the sale. The commission will endeavor to encourage competition by advertising the sale in advance and in as many locations as practical.

(5) Personal property item(s) will be sold to the highest qualified bidder, but shall not be sold for less than the appraised value. Persons or entities with an established, recognized, and verifiable interest in personal property item(s), such as kin of the original owner or communities with historic connections to the property, may, at the discretion of the commission, be invited to match the highest responsible bid and be awarded the item.

AUTH: 22-3-1003, MCA

IMP: 22-3-1003, MCA

NEW RULE VII EXCLUSION OF NONHISTORIC PROPERTY (1) These rules do not apply to the sale of nonhistoric property acquired or managed by the commission. Property excluded from these rules, and subject to all normal state procurement and surplus requirements, includes real or personal property acquired or managed by the commission that clearly and unequivocally does not fall within the type of property described in 22-3-421, et seq. and 22-3-1001, MCA. Such property may include property used in the administration and management of other properties acquired or managed by the commission, including, but not limited to, modern vehicles used to carry out daily work activities; restaurant equipment; washers, dryers, computers, and other appliances; and, nonhistoric office space and equipment. If any such property sold is a Bovey asset, all funds from the sale of that property shall be placed in the Bovey asset trust fund as required by 22-3-1003, MCA.

AUTH: 22-3-1003, MCA

IMP: 22-3-1003, MCA

REASON: The commission is proposing the adoption of New Rules I through VII to establish procedures for the sale of real and personal property, in accordance with the legislative directive set forth in 22-3-1003(8), MCA. Among other things, the new rules provide criteria for determining whether real and personal property may qualify for sale. The new rules detail specific steps that will be followed in order to preserve and protect valuable state historic assets, while at the same time allowing for the transfer of property that would better support the goal and purpose of the commission and the state through raising funds to preserve and manage other property owned by the commission or to acquire additional heritage property. The ten criteria stipulated in 22-3-1003, MCA, are included in New Rule II as criteria to determine the historical value of property. New Rule II also specifically references the Montana Antiquities Act and associated administrative rules for the sale of property to ensure that archaeological and paleontological considerations are made prior to any sale of heritage property.

5. Concerned persons may submit their data, views, or arguments concerning the proposed actions either orally or in writing at the hearing. Written

data, views, or arguments may also be submitted to: Montana Heritage Preservation and Development Commission, 101 Reeder's Alley, Helena, Montana 59601; telephone (406) 449-6522; fax (406) 449-7081; or e-mail mhc@mt.gov, and must be received no later than 5:00 p.m., January 25, 2008.

6. Kelly Casillas, Department of Commerce, has been designated to preside over and conduct this hearing.

7. The commission maintains a list of interested persons who wish to receive notices of proposed rulemaking actions. Persons who wish to have their name added to this list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all commission administrative rulemaking proceedings. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the Montana Heritage Preservation and Development Commission, 101 Reeder's Alley, Helena, Montana 59601; telephone (406) 449-6522; fax (406) 449-7081; or e-mail mhc@mt.gov, or may be made by completing a request form at any rules hearing held by the commission.

8. An electronic copy of this Proposal Notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

9. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

MONTANA HERITAGE PRESERVATION
AND DEVELOPMENT COMMISSION
DEPARTMENT OF COMMERCE

/s/ G. MARTIN TUTTLE
G. MARTIN TUTTLE
Rule Reviewer

/s/ ANTHONY J. PREITE
ANTHONY J. PREITE
Director
Department of Commerce

Certified to the Secretary of State December 10, 2007.